

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

BRENT KREINBRING,

Plaintiff,

vs.

ALTERNATIVE CLAIMS SERVICES,
INC., GARY HOFFMAN, an individual,
and TONY POLK, an individual,

Defendants.

No. C03-123 LRR

**ORDER REGARDING
MOTION TO REMAND**

This matter is before the court pursuant to the Motion to Remand (docket no. 5) filed by Plaintiff Brent Kreinbring. Kreinbring seeks an order remanding this case to the Iowa District Court for Linn County and for costs.

I. INTRODUCTION

On May 6, 2003, Kreinbring filed suit against Defendants Alternative Claims Services, Inc., Gary Hoffman, and Tony Polk in the Iowa District Court for Linn County. In his Complaint, Kreinbring alleges violation of Iowa's franchise statute, breach of contract, violation of Iowa's business opportunity promotions statute, and fraudulent misrepresentation. The Complaint did not allege a specific amount of damages because Iowa Rule of Civil Procedure 1.403(1) provides that a pleading "shall not state the specific amount of money damages sought but shall state whether the amount of damages meets the [Iowa court's] jurisdiction amount." Defendants were served with the Complaint on May 9, 2003.

On July 1, 2003, Kreinbring sent to Defendants a demand letter seeking \$150,000.00 in damages to settle the claim. Defendants declined Kreinbring's offer on

August 1, 2003. Defendants received Kreinbring's answers to interrogatories on September 26, 2003. In his answer to Interrogatory No. 4, Kreinbring itemized his alleged losses, the total of which exceeded \$75,000.00.

On October 27, 2003, Defendants removed this case on the basis of diversity jurisdiction. *See* 28 U.S.C. § 1332 (giving district courts original jurisdiction over matters where there is diversity of citizenship and where "the matter in controversy exceeds the sum or value of \$75,000"). On November 21, 2003, Kreinbring filed a Motion to Remand on the grounds that Defendants did not timely remove the action under 28 U.S.C. § 1446(b). Kreinbring contends Defendants failed to file the Notice of Removal within thirty days of: (1) the date Defendants were served with the Complaint; or (2) the date from which Defendants could reasonably ascertain the amount in controversy exceeded \$75,000.00.

II. ANALYSIS

The parties do not dispute that the requirements for diversity jurisdiction exist in this case: the "matter in controversy exceeds the sum or value of \$75,000" and the parties are "citizens of different States." 28 U.S.C. § 1332(a). However, the parties dispute whether Defendants timely removed this case to federal court pursuant to 28 U.S.C. § 1446(b). Section 1446(b) provides, in pertinent part:

[the] notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based . . .

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order, or other paper from which it may first be ascertained that the case is one which is or has

become removable. . . .

28 U.S.C. § 1446(b).

Section 1446(b) provides a two-step test for determining whether a defendant timely removed a case. The first paragraph provides that if the case stated by the initial pleading is removable, then notice of removal must be filed within thirty days from the receipt of the initial pleading by the defendant. The second paragraph provides that if the case stated by the initial pleading is not removable, then notice of removal must be filed within thirty days from the receipt of an amended pleading, motion, order, or other paper from which the defendant can ascertain that the case is removable.

The first paragraph of Section 1446(b) is inapplicable to the case at hand because it was not clear from the face of Kreinbring's Complaint that he claimed damages in excess of the federal jurisdictional requirement. Therefore, the second paragraph of Section 1446(b) applies. Kreinbring contends Defendants' removal was untimely because the July 1, 2003 demand letter was "other paper" from which Defendants could reasonably ascertain that the amount in controversy exceeded \$75,000.00. Defendants counter that they timely removed after receiving Kreinbring's interrogatory answers on September 26, 2003.

This court has found no authority from the Eighth Circuit Court of Appeals definitively answering the question of what type of "other paper" will suffice to trigger the thirty-day time period set forth in Section 1446(b). In fact, the Eighth Circuit Court of Appeals has specifically declined to answer the question. *See In re Minnesota Mut. Life Ins. Co. Sales Practices Litigation*, 346 F.3d 830,835 (8th Cir. 2003) ("Although Appellants' letter offers further support for the valuation of the claims, we do not decide here whether a post-complaint settlement offer alone is sufficient to establish the requisite

amount in controversy.”). However, the Fifth Circuit has held that “‘other paper’ must result from the voluntary act of a plaintiff which gives the defendant notice of the changed circumstances which now support federal jurisdiction.” *Addo v. Globe Life & Acc. Ins. Co.*, 230 F.3d 759, 762 (5th Cir. 2000) (citing *SWS Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 494 (1996)).

In *Addo*, the court held the plaintiff’s post-complaint demand letter indicating she would seek damages exceeding the jurisdictional amount was “other paper” under Section 1446(b). 230 F.3d at 762. The *Addo* court noted the majority of lower courts have held that a post-complaint demand letter can be “other paper” under Section 1446(b). *Id.* at 761; *see, also Stramel v. GE Capital Small Bus. Fin. Corp.*, 955 F.Supp. 65, 67 (E.D.Tex. 1997); *Sunburst Bank v. Summit Acceptance Corp.*, 878 F.Supp. 77, 82 (S.D.Miss. 1992) (“This actual notice [that the case is removable] may be communicated in a formal or informal manner.”); 14C Charles Alan Wright, *et al.*, *Federal Practice and Procedure* § 3732 (“[C]orrespondence between the parties and their attorneys or between attorneys usually [is] accepted as [an] ‘other paper’ . . . that initiate[s] a new thirty-day period for removability.”). The *Addo* court also found that “other paper” must result from a voluntary act of the plaintiff that gives the defendant notice of the changed circumstances that support federal jurisdiction. 230 F.3d at 762.

Here, the court finds that the demand letter at issue was a voluntary act by Kreinbring’s counsel and that the demand letter permitted Defendants to reasonably ascertain that the amount in controversy exceeded \$75,000.00. The demand letter demanded \$150,000.00 in damages and was sufficient to trigger the thirty-day time period. Since Defendants’ Notice of Removal was not filed within thirty days of receipt of the demand letter, the Notice of Removal was not timely filed and therefore removal was improper. In light of this court’s obligation to strictly construe removal statutes and

resolve all doubts in favor of state court jurisdiction, *Transit Cas. Co. v. Certain Underwriters at Lloyd's of London*, 119 F.3d 619, 625 (8th Cir. 1997), and to construe all doubts in favor of remand, *Green v. Ameritrade, Inc.*, 279 F.3d 590, 596 (8th Cir. 2002), and in light of the dearth of authority permitting the removal Defendants have attempted, this court finds Kreinbring's Motion to Remand should be granted and this matter remanded to state court.

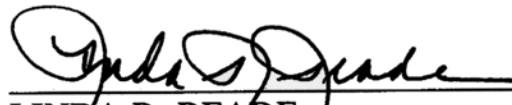
Finally, Kreinbring seeks an award of costs. The court finds an award of costs is not warranted in this matter. The court therefore exercises its discretion in denying Kreinbring's request for costs. *See* 28 U.S.C. § 1447(c).

III. CONCLUSION

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Remand (docket no. 5) is GRANTED and the court REMANDS this action to the Iowa District Court for Linn County for all further proceedings.
2. The Clerk of Court is directed to provide a certified copy of this Order to the Clerk of Court for the Iowa District Court for Linn County.
3. Plaintiff's request for costs is DENIED.

IT IS SO ORDERED this 27th day of May, 2004.



LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA